

UNITED STATES OF AMERICA
IN THE WESTERN DISTRICT OF MICHIGAN

United States of America,
Plaintiff,

File No. 1:18-cr-166

v.

Hon. Paul L. Maloney
U.S. District Court Judge

Daniel Dario Trevino (D-1)
Defendant.

Joel S. Fauson
Assistant United States Attorney
P.O. Box 208
Grand Rapids, MI 49501-0208
616-456-2404

J. Nicholas Bostic P40653
Attorney for Defendant
909 N. Washington Ave.
Lansing, MI 48906
517-706-0132

**DEFENDANT DANIEL TREVINO'S (D-1) MOTION TO ADJOURN
SENTENCING**

Defendant Trevino, for his motion, states:

1. Sentencing in this matter is scheduled for December 20, 2019.
2. Pursuant to W.D. Mich. LCrR 32.2(f), the presentence investigation report was due nine days before sentencing or on December 11, 2019.
3. The conspiracy charge in this cases alleges the conspiracy dates to begin in 2010.
4. This date selection caused two offenses with offense dates in 2001 and sentence dates in 2002 to be within the 10 year provision of USSG §4A1.1(b) and (c).

5. The interpretation of the criminal history information and the registers of actions of those cases was difficult due to inaccuracies and changes in the criminal reporting process in Michigan over the years.

6. On December 13, 2019, counsel for Mr. Trevino went to the 30th Circuit Court to physically inspect the file or order it from archives if necessary.

7. Upon arrival, counsel learned that the Clerk's office was closed on December 12 and 13, 2019 to conduct a file inventory.

8. The proper interpretation of these two 2002 sentences made a difference in the number of criminal history points to the extent it also made a difference in the final criminal history category which, in turn, will impact the recommended guideline range to a significant extent.

9. Due to the extent of proofs and the insertion of considerable "relevant material" by the government that was not introduced at trial, the defense filed extensive objections most of which will be included in an addendum to the presentence investigation report.

10. The probation officer informed counsel at the informal objection conference that his office was working under a significant caseload.

11. Counsel for Defendant Trevino asserts that an extension of time to file objections and/or a sentencing memorandum will not be an adequate remedy as counsel for Mr. Trevino has to visit an incarcerated prisoner at McCreary Federal

Correctional Institution in Ashland, Kentucky on December 16, 2019 and will travel on December 15, 2019 which would leave inadequate time to finish the filings and for the Court to properly review them.

12. Counsel for the government has consented to a brief adjournment of the sentencing and notes that he will not be available until after January 3, 2020.

13. The attached brief is incorporated herein by reference.

WHEREFORE, Defendant Trevino respectfully requests this Honorable Court enter an order adjourning the sentencing for a reasonable time to a date convenient for the Court and parties.

12/13/2019
Date

/s/ J. Nicholas Bostic
J. Nicholas Bostic P40653
Attorney for Defendant Trevino
909 N. Washington Ave.
Lansing, MI 48906
(517) 706-0132

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BRIEF IN SUPPORT OF DEFENDANT DANIEL TREVINO'S (D-1)
MOTION TO ADJOURN SENTENCING

FACTS

The facts necessary to resolution of this motion are contained within the motion above and on file with the Clerk.

LAW/ARGUMENT

Fed.R.Crim.P. 45(b)(1)(a) addresses extending time. That rule states:

(b) Extending Time.

(1) In General. When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires;

Plaintiff asserts that the delay in the submission of the presentence investigation report and the local rule requirements concerning the timing of filing

objections or a motion for variance are good cause for a brief adjournment of the sentencing.

CONCLUSION

Resolution of requests to modify time limits is left to the very broad discretion of a trial court. The granting of this request will protect Defendant's rights to have the Court fully informed of all relevant and accurate information needed for sentencing.

RELIEF REQUESTED

WHEREFORE, Defendant Trevino respectfully requests this Honorable Court enter an order adjourning the sentencing for a reasonable time to a date convenient for the Court and parties.

12/13/2019
Date

/s/ J. Nicholas Bostic
J. Nicholas Bostic P40653
Attorney for Defendant
909 N. Washington Ave.
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CERTIFICATE OF SERVICE

I, J. Nicholas Bostic, undersigned attorney for Defendant, certify that, on December 13, 2019, I electronically filed Defendant Trevino's Motion to Adjourn Sentencing by using ECF system which will send notice to all counsel of record.

Dated: 12/13/2019

/s/ J. Nicholas Bostic
J. Nicholas Bostic (P40653)
Attorney for Defendant